



Comptroller General  
of the United States

629142

Washington, D.C. 20548

## Decision

**Matter of:** International Service Corporation

**File:** B-255739.3

**Date:** February 14, 1995

David L. Ebbett for the protester.  
Stephen J. Johnson, Esq., Lyon and McManus, for Satellite Services, Inc., an interested party.  
Thomas F. Brown, Department of the Air Force, for the agency.  
Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Where contracting agency did not consider protester's price to be too high for the scope of effort and technical approach proposed, agency was not required to conduct discussions on the price proposed by the protester.

### DECISION

International Service Corporation (ISC) protests the award of a contract to Satellite Services, Inc. under request for proposals (RFP) No. F10603-93-R-0001, issued by the Department of the Air Force, Mountain Home Air Force Base, Idaho, for the maintenance of military family housing units. ISC contends that the Air Force failed to conduct meaningful discussions concerning ISC's price proposal.

The protest is dismissed in part and denied in part.

The solicitation provided for the award of a fixed-price, award-fee contract for 1 year with four 1 year options to the offeror whose proposal was judged to be most advantageous to the government, price (including option year prices) and other factors considered. Price and technical merit were considered of equal importance and offerors were specifically advised that the offeror submitting the proposal with the lowest price, or the highest technical evaluation rating, might not receive the award. The RFP

included the following technical factors, in descending order of importance:

- (1) comprehension of requirements,
- (2) management organization and staffing,
- (3) contract management, and
- (4) corporate experience.

Eight proposals were submitted and evaluated. The price proposals were reviewed by line item and a spread sheet was prepared showing each contractor's pricing by line item for the basic and option years. Prices of the eight proposals, ranging from a low of \$8,570,614 to a high of \$13,222,771, were considered competitive and consistent with the government's estimate of \$10,464,652. The protester's offer of \$12,503,449 was third highest.

All eight proposals were included in the competitive range. The Air Force conducted discussions with and requested best and final offers (BAFO) from the competitive range offerors. During discussions, the only issues raised with ISC concerned application of profit to general and administrative expenses and a required certification.

Only one offeror revised its technical proposal in its BAFO; three offerors made no revisions to their BAFO prices, four offerors, including the awardee, reduced their BAFO prices, and one offeror, the protester, increased its BAFO price. BAFO prices ranged from a low of \$9,405,577 to a high of \$14,535,747. ISC's BAFO price, \$13,742,639, was the third highest; Satellite's BAFO price, \$9,508,658, was the second lowest. After evaluating BAFOs, the Air Force awarded the contract to Satellite Services.

ISC contends that the Air Force failed to conduct meaningful discussions pursuant to Federal Acquisition Regulation (FAR) § 15.610 since the Air Force did not inform ISC that the agency considered ISC's price too high. The protester specifically argues that its initial price of over \$9.00 per square foot for lead-based paint removal, under line item 0001AT, should have been the subject of discussions because it was much higher than Satellite's price, which ISC states was only \$.75 per square foot, and higher than the prices of other offerors for this item. According to ISC, a difference of this magnitude should have alerted agency personnel of a problem and warranted discussions with ISC on this line item. The protester also argues that its subcontractor submitted questions concerning the volume of lead paint removal required per occurrence for pricing purposes, but no response was provided.

In negotiated procurements, agencies are required to conduct meaningful discussions with competitive range offerors.

Arthur Anderson & Co., 71 Comp. Gen. 233 (1992), 92-1 CPD ¶ 168. In order for discussions to be meaningful, an agency generally must point out deficiencies, uncertainties, or suspected mistakes in a proposal. See FAR § 15.610(c). Although an agency may inform an offeror during discussions that its cost or price is considered too high or unrealistic where otherwise appropriate, FAR § 15.610(e)(2)(ii), the government has no responsibility to inform an offeror that its cost or price is high where the offeror's cost or price is not considered excessive or unreasonable. Weeks Marine, Inc./Bean Dredging Corp., a Joint Venture, 69 Comp. Gen. 108 (1989), 89-2 CPD ¶ 505; Applied Remote Technology, Inc., B-250475, Jan. 22, 1993, 93-1 CPD ¶ 58.

The Air Force reviewed ISC's price proposal in detail and was satisfied that ISC's price was competitive and reasonable for its proposed technical approach. Nothing in the record casts doubt on the reasonableness of this agency determination, such that the agency had a duty to advise ISC that its price was too high, and the Air Force had no duty to enter into price discussions with ISC solely because it offered one of the higher total prices. See Triangle Maintenance Corp., B-255953, Apr. 19, 1994, 94-1 CPD ¶ 267; Weeks Marine, Inc./Bean Dredging Corp., a Joint Venture, *supra*. Indeed, under FAR § 15.610(e)(2), the Air Force was prohibited from informing ISC that its price was high in relation to the other proposals unless it regarded ISC's price to be too high or unrealistic for what it offered. Warren Elec. Constr. Corp., B-236173.4; B-236173.5, July 16, 1990, 90-2 CPD ¶ 34. As noted above, the Air Force did not consider ISC's price too high for the approach the company proposed. In this connection, after the initial evaluation, the evaluators found that the protester offered a better technical proposal than all but one other offeror, with the highest technical score for the comprehension of the requirements factor and second highest technical scores for the management and organization and contract managements factors. Under these circumstances, we find that the agency was not required to conduct discussions with ISC concerning its overall price.

We also disagree with ISC's contention that the disparity between its price and the price of the awardee and other offerors for lead paint removal was of such magnitude that it should have alerted the agency to the need for discussions with ISC. The record shows that the disparity between the initial prices of the protester and the awardee for this work was not as high as ISC asserts. The awardee's

initial price for lead paint removal was \$3.30, not \$.75. The other initial prices proposed were \$1.00, \$5.00, \$2.48, \$2.23, \$6.66, \$1.15, and \$9.51 for ISC.<sup>1</sup> The awardee did offer \$.75 for lead paint removal in its BAFO, while the protester offered \$9.23.<sup>2</sup>

Additionally, because this was a new requirement, the agency had no historical data on which to rely and could not provide prospective offerors with an anticipated number of paint removal jobs or an anticipated square foot range for each job. The agency also could not provide the maximum level or percentage of lead in the paint to be removed. The agency also explains that broad ranges in prices, such as were submitted here, are common in the maintenance trades and that broad variations on individual line items can be attributed to differences in company estimating system and skills and the degree of state-of-the-art technology to be used.

While the prices varied significantly for this item, we agree with the agency that because there was no historical data for this item and because offerors may have different technical capabilities and may have used different pricing techniques, the prices themselves did not suggest that discussions were needed. Indeed, while the awardee's first-year price was approximately 288 percent under ISC's first-year price, the awardee's price was 330 percent higher than the lowest price. Basically, although ISC's price for lead paint removal was high, it was not so high that it should have been considered excessive or indicative of a lack of understanding of the requirement.

Finally, the protester alleges that its subcontractor for the lead paint removal submitted written questions regarding the extensiveness of the work and never received a clarification from the agency. In an October 25 letter to all offerors, the agency provided all available information concerning the lead paint removal requirement and believed it had answered ISC's subcontractor's concerns. Under our

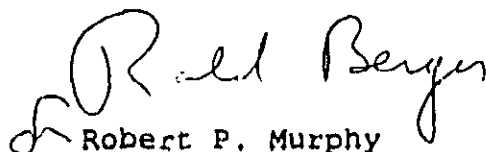
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<sup>1</sup>These prices were for the base year; none of the prices offered by these three offerors for the option years varied significantly from their base prices.

<sup>2</sup>To the extent that ISC argues that the wider disparity in the BAFO prices for lead paint removal should have caused the agency to reopen discussions and request a second round of BAFOs, we do not agree. Where deficiencies are introduced for the first time in BAFOs, the agency is not compelled to reopen discussions. Inner Harbor West Joint Venture, B-249945.3, Mar. 11, 1993, 93-1 CPD ¶ 232.

Bid Protest Regulations, protests based on apparent improprieties in a solicitation, as here, shall be filed prior to the time set for receipt of initial proposals, 4 C.F.R. § 21.2(a)(1) (1994). If ISC was concerned that the agency had failed to address its subcontractor's questions, or that the lead paint removal requirements of the RFP were unclear, then ISC should have raised this issue before the time set for receipt of initial proposals. Since ISC did not raise this issue until it submitted its comments on the agency report on November 23, 1994, long after the initial closing date, the protest on this issue is untimely.<sup>1</sup>

Accordingly, the protest is dismissed in part and denied in part.

  
Robert P. Murphy  
General Counsel

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<sup>1</sup>In its November 23 comments on the agency report, ISC also argues for the first time that the RFP did not state if award would be on the basis of the lowest-priced technically acceptable proposal or best value to the government and did not indicate whether proposals would be scored or graded or how prices would be evaluated. Because the protester did not object until after award, its protest on these issues is untimely. 4 C.F.R. § 21.2(a)(1). In any event, we note that the RFP stated that award would be made to that offeror whose proposal, for the base and option years, offered the best value to the government.